



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 33610020

Date: NOV. 21, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a Brazilian jiu-jitsu athlete, seeks to classify himself as an individual of extraordinary ability in athletics. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the record does not establish the Petitioner received a one-time achievement of a major, internationally recognized award. The Director further concluded that the record does not satisfy, in the alternative, at least three of the 10 initial evidentiary criteria. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Section 203(b)(1) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the [noncitizen] has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the [noncitizen] seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the [noncitizen]'s entry into the United States will substantially benefit prospectively the United States.

The term “extraordinary ability” refers only to those individuals in “that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then they must provide sufficient qualifying documentation that meets at least three of the 10 categories listed at 8 C.F.R. § 204.5(h)(3)(i)-(x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010).

II. ANALYSIS

On the Form I-140, Immigrant Petition for Alien Workers, the Petitioner described the proposed employment he seeks as “Brazilian Jiu-Jitsu Athlete.” As noted above, the Director concluded the record does not establish the Petitioner received a one-time achievement of a major, internationally recognized award. The Director further determined that the record does not satisfy, in the alternative, at least three of the 10 criteria listed at 8 C.F.R. §§ 204.5(h)(3)(i)-(x). Specifically, the Director found that the record satisfies the criteria at 8 C.F.R. §§ 204.5(h)(3)(i) and (vii), but that the record does not satisfy the criteria at 8 C.F.R. §§ 204.5(h)(3)(ii)-(v), and (viii), noting that the Petitioner did not assert he qualifies under the criteria at 8 C.F.R. §§ 204.5(h)(3)(vi), (ix)-(x). On appeal, the Petitioner reasserts that the record satisfies the criteria at 8 C.F.R. §§ 204.5(h)(3)(ii)-(iv) and (viii), in addition to the criteria at 8 C.F.R. §§ 204.5(h)(3)(i) and (vii). The Petitioner does not assert on appeal that the record satisfies the criteria at 8 C.F.R. §§ 204.5(h)(3)(v)-(vi), (ix)-(x), thereby waiving these criteria. *See, e.g., Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009) (citing *Greenlaw v. U.S.*, 554 U.S. 237 (2008) (upholding the party presentation rule)). The Petitioner does not overcome the Director’s denial for the reasons discussed below.

Evidence of the [noncitizen’s] participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought. 8 C.F.R. § 204.5(h)(3)(iv).

The Director acknowledged that the Petitioner submitted information from the Jiu Jitsu World League (JJWL) and the International Brazilian Jiu-Jitsu Federation (IBJJF), indicating that, in addition to participating as an athlete, the Petitioner participated as a referee at various events. However, the Director distinguished the role of an athletic referee “ensuring fair play according to the rules” from judging the work of others, as contemplated by the criterion at 8 C.F.R. § 204.5(h)(3)(iv). The Director also noted that the Petitioner submitted printouts of information from various websites related to jiu-jitsu; however, the Director observed that the printouts neither address the Petitioner nor “demonstrate that [the Petitioner] participated either individually or on a panel, as a judge of the work of others in the same or an allied field of endeavor.” Therefore, the Director concluded that the record does not satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(iv).

On appeal, the Petitioner reasserts that Brazilian jiu-jitsu referees exercise discretion and apply subjective judgment to determine not only points participants earned during a match for their qualitative performances but also which participant ultimately won a given match and that, therefore, his participation as a jiu-jitsu referee satisfies the criterion at 8 C.F.R. § 204.5(h)(3)(iv).

Information in the record, including a letter from the arbitration director of the JJWL, and various jiu-jitsu rulebooks, establish that, unlike many other athletic referees, Brazilian jiu-jitsu referees exercise discretion and apply subjective judgment to determine not only points participants earned during a match for their qualitative performances but also which participant ultimately won a given match. Because the record establishes the extent of the discretion and subjective judgment Brazilian jiu-jitsu referees apply, the record satisfies the criterion at 8 C.F.R. § 204.5(h)(3)(iv), contemplating evidence of the Petitioner's participation, either individually or on a panel, as a judge of the work of others in the same or allied field of specification for which classification is sought, as required by the criterion at 8 C.F.R. § 204.5(h)(3)(iv). Accordingly, we withdraw the Director's conclusion to the contrary.

Because the record satisfies the criterion at 8 C.F.R. § 204.5(h)(3)(iv), in addition to the criteria at 8 C.F.R. §§ 204.5(h)(3)(i) and (vii), it satisfies at least three of the 10 criteria at 8 C.F.R. §§ 204.5(h)(3)(i)-(x). Therefore, we reserve our opinion regarding whether the record also satisfies the criteria at 8 C.F.R. § 204.5(h)(3)(ii)-(iii) and (viii). *See, e.g., INS v. Bagamashad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"). We will evaluate the totality of the evidence in the context of a final merits determination, discussed below.

Turning to the final merits determination, although the record satisfies at least three of the 10 criteria at 8 C.F.R. §§ 204.5(h)(3)(i)-(x), it does not show sustained national or international acclaim and demonstrate that the Petitioner is among the small percentage at the very top of the field of endeavor. *See Kazarian*, 596 F.3d at 1119-20 (citing section 203(b)(1)(A) of the Act; 8 C.F.R. §§ 204.5(h)(2)-(3)). Black's Law Dictionary defines "sustain" as "to support or maintain, especially over a long period of time" or "to persist in making (an effort) over a long period of time." *Sustain*, Black's Law Dictionary (11th ed. 2019).

On appeal, the Petitioner asserts that he has "won over a dozen gold medals at international events, as well as becoming a Brazilian National, American National, World Master, and Pan American Championship medalist" both before the filing date and "in 2023 and 2024 . . . [c]ontinuing to sustain acclaim." He also asserts that he is one of [REDACTED] degree black belt in Brazilian jiu-jitsu." He further asserts that an opinion letter, written by an individual who holds a first-degree black belt, establishes the Petitioner has sustained national or international acclaim and demonstrates he is among the small percentage at the very top of the field of endeavor.

We first note that the Petitioner does not assert on appeal—and the record does not support the conclusion—that evidence material to the criteria at 8 C.F.R. §§ 204.5(h)(3)(ii)-(x) show sustained national or international acclaim and demonstrate he is among the small percentage at the very top of the field of endeavor. Rather, the Petitioner limits his assertions to documentation of his receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor, as contemplated by the criterion at 8 C.F.R. § 204.5(h)(3)(i).

We next note that the Petitioner's assertions regarding the number of other individuals in the world who hold []-degree black belts do not establish that he is among the small percentage at the very top of the field of endeavor, and how he may have sustained national or international acclaim. On the contrary, the copy of the IBJJF General System of Graduation in the record establishes that there are additional degrees of black belts, further surpassed by "red and black," "red and white," and "red" belts that appear to indicate superiority over a []-degree black belt. Furthermore, the IBJJF General System of Graduation indicates that factors in determining an individual's belt color include the individual's age, the duration the individual participated with a lower belt color, and the completion of certain training programs such as first aid and CPR, none of which are indicative of sustained acclaim. Therefore, although the record establishes that the United States Brazilian Jiu-Jitsu Federation awarded the Petitioner a []-degree black belt in July 2020, it does not establish that such a degree demonstrates he is among the small percentage at the very top of the field of endeavor. Moreover, even if being awarded a []-degree black belt may establish national or international acclaim, Brazilian jiu-jitsu participants appear to hold their belt colors and degrees, regardless of their competition results and other performance metrics. Therefore, without more, evidence that an individual has held a particular belt color or degree level for a number of years does not establish how such acclaim would be sustained through continued performance, rather than being merely perpetuated by default. As noted above, sustained acclaim contemplates support or maintenance, especially over a long period of time, or persistent effort over a long period of time, and the record does not sufficiently establish such sustained acclaim. *See Sustain*, Black's Law Dictionary (11th ed. 2019).

We further note that the Petitioner's references on appeal to evidence of his activities after he filed the Form I-140, such as competitions in which he participated in 2024, cannot—and do not—establish eligibility, and we need not address them further. A petitioner must establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved based on speculation of future eligibility or after a petitioner becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to U.S. Citizenship and Immigration Services (USCIS) requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

The record establishes that the Petitioner finished in first place for his various belt and weight classifications at competitions in 2014, 2016, 2017, 2020, 2022, and 2023, before he filed the Form I-140, at between one and four competitions per year. However, the record does not sufficiently contextualize the evidence of the Petitioner's participation in competitions. For example, it does not clarify the total number of competitions in which the Petitioner participated for any given year, and whether the results in the record reflect his overall performance, or simply a selective representation of it. The record also does not clarify, through objective evidence, the number of competitions in which typical jiu-jitsu athletes participate in a given year, to indicate how the Petitioner's participation compares to typical jiu-jitsu athletes' activities. Similarly, the record does not indicate the number of other participants against whom the Petitioner competed for a given belt and weight classification at the particular competitions, to contextualize the athletic competition he may have overcome—and we note that several results appear to indicate that the Petitioner finished first among only one participant for a given belt and weight classification. Finishing in first place by default because there is only one participant at a particular competition is not evidence of success or acclaim.

Further, the record does not explain omissions of the Petitioner's activities during the years 2015, 2018-19, and 2021, such as whether and why the Petitioner may not have participated in competitions at all during nearly half of the 10-year period between 2014-23, inclusive. Relatedly, the record also does not elaborate on the number of competitions in which the Petitioner participated but he finished other than first place—whether within a given year or throughout the 10 years for which there is partial information, to contextualize the frequency of his first-place finishes.

In summation, the record provides insufficient context for the acclaim the Petitioner may have received—whether national or international—for finishing in first place for a given belt and weight classification at any particular competition, especially when he appears to have been the only participant for his belt and weight classification at several competitions. Moreover, the record does not establish how the Petitioner may have sustained such acclaim. Therefore, the record does not establish that the Petitioner's intermittent first-place finishes at some competitions between 2014-2023 show sustained national or international acclaim and demonstrate that the Petitioner is among the small percentage at the very top of the field of endeavor. *See Kazarian*, 596 F.3d at 1119-20 (citing section 203(b)(1)(A) of the Act; 8 C.F.R. §§ 204.5(h)(2)-(3)).

We acknowledge that the record contains an opinion letter, written by an individual who holds a first-degree black belt, that opines, among other things, that the Petitioner has “sustained international acclaim” and that he “has risen to the very top of the sport.” However, the evidence discussed above contradicts the author's opinions, indicating instead that the Petitioner has not sufficiently sustained whatever acclaim he may have received and that earning a []-degree black belt is not indicative of being among the very small percentage at the very top of the field of endeavor. As a matter of discretion, we may use opinion statements submitted by a petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, we may give an opinion less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id.*; *see also Matter of V-K-*, 24 I&N Dec. 500, 502 n.2 (BIA 2008) (providing that “opinion testimony, while undoubtedly a form of evidence, does not purport to be evidence as to ‘fact’ but rather is admissible only if ‘it will assist the trier of fact to understand the evidence or to determine a fact in issue’”).

We also acknowledge that the Petitioner discusses several other, non-precedent decisions. However, our unpublished, non-precedent decisions do not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case, and they may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy. None of the non-precedent decisions the Petitioner discusses on appeal address Brazilian jiu-jitsu in general, or individuals who hold a []-degree black belt more specifically; therefore, they provide minimal informative or persuasive value in this matter.

We have reviewed the record in its entirety. The Petitioner has not established that the totality of the material provided shows both sustained national or international acclaim and demonstrates that the Petitioner is among the small percentage at the very top of the field of endeavor. Thus, the Petitioner is not eligible for the requested classification. *See Kazarian*, 596 F.3d at 1119-20 (citing section 203(b)(1)(A) of the Act; 8 C.F.R. §§ 204.5(h)(2)-(3)).

III. CONCLUSION

The evidence meets at least three of the 10 criteria at 8 C.F.R. §§ 204.5(h)(3)(i)-(x). However, the totality of the record does not support a conclusion that the Petitioner has established the acclaim and recognition required for the classification sought. *See Kazarian*, 596 F.3d at 1119-20. The Petitioner has not shown that the significance of his work is indicative of the required sustained national or international acclaim or that it is consistent with a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. The record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field and that he is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act; *see also* 8 C.F.R. § 204.5(h)(2).

ORDER: The appeal is dismissed.